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Prevention of armed conflict

The rule of law at the national and international levels

Note verbale dated 29 March 2017 from the Permanent Mission of Cuba to the United Nations addressed to the Secretary-General

The Permanent Mission of Cuba to the United Nations presents its compliments to the Secretary-General and has the honour to transmit the views of the Republic of Cuba on the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011, established pursuant to General Assembly resolution 71/248 (see annex).

The Permanent Mission of Cuba to the United Nations kindly requests the Secretary-General to circulate the present note verbale and its annex as a document of the General Assembly, under agenda items 31 and 84.

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Annex to the note verbale dated 29 March 2017 from the Permanent Mission of Cuba to the United Nations addressed to the Secretary-General

Views of the Republic of Cuba on the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011, established pursuant to General Assembly resolution 71/248

Cuba was one of the Member States that voted against General Assembly resolution 71/248 and it has considered the report submitted in accordance with paragraph 8 of that resolution (A/71/755).

In the context of the important work of conflict prevention, the establishment of the Mechanism has set a dangerous precedent for United Nations practice.

Cuba wishes to convey its main concerns regarding the Mechanism as follows:

- The Mechanism goes beyond the functions and powers conferred on the General Assembly under Articles 10, 12 and 22 of the Charter of the United Nations.
- The Mechanism violates the fundamental principles of the Charter of the United Nations and international law, in particular those relating to sovereign equality and non-interference and non-intervention in the internal affairs of States.
- The Mechanism fails to acknowledge that the primary burden rests with each State and its judicial system to investigate all crimes committed under its jurisdiction and to prosecute those responsible.
- While the Mechanism is funded from voluntary contributions, it will lack independence and impartiality.
- The mandate entrusted to the Mechanism, which has no legal basis under the Charter of the United Nations, makes it a subsidiary body of the General Assembly, with legal personality, and provides both the Mechanism and its personnel with unlawful privileges and immunities.
- The Mechanism has been given quasi-prosecutorial functions by being entrusted with a mandate to establish the connection between crime-based evidence and the persons who may be responsible, and to then share that information with the national, regional or international courts or tribunals that it considers may have jurisdiction over the crimes. This is a legal outrage because even in conventional judicial systems a single body cannot have both adjudicatory and punitive functions.
- The establishment of the Mechanism has set a precedent in the work of the General Assembly because of the overlapping functions of the Mechanism and the Independent International Commission of Inquiry on the Syrian Arab Republic, which was established by the Human Rights Council.
- The Mechanism unfairly singles out one State, a practice which the Republic of Cuba rejects.

On the basis of the above, the Republic of Cuba reiterates its objection to the International, Impartial and Independent Mechanism to Assist in the Investigation

and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011, established pursuant to General Assembly resolution 71/248. The work of conflict prevention must be carried out in strict compliance with both the Charter of the United Nations and international law.